

conclusively presumed to have condoned the offence. Under the new rule, sexual intercourse raises the presumption of condonation for both parties but this may be rebutted by evidence to the contrary.

New Zealand has adopted the most liberal provisions on collusion of any Commonwealth country, combining both the British and Australian law. Not only was collusion made a discretionary bar to divorce by the 1963 New Zealand Statute, even in cases of adultery, but following the Australian Act the scope of the bar was limited still more by the addition of the words "with intent to cause a perversion of justice" to the appropriate provision of the Act (section 31).

Previously, since 1867, in New Zealand collusion had been an absolute bar only in cases of adultery; in petitions based upon other grounds it was merely discretionary. Furthermore, the existence of the separation ground based upon an agreement by the parties, has meant that the New Zealand courts have had to develop a more restricted view of the concept of collusion.

4. *Maintenance and Children*

With regard to the custody and maintenance of children, New Zealand has again followed Australia and England in making it a prerequisite to the granting of a decree that adequate arrangements have been made for the custody and welfare of all the children of the marriage. "All the children" is defined widely to include not only the children of parties to the divorce, but any child who was a member of the family of the husband or wife at the time when the couple ceased to cohabit or instituted proceedings.

Finally, New Zealand law has attempted to put the two sexes on a greater footing of equality. Henceforth, the third party in a case of adultery has now become a co-respondent and is liable for damages regardless of sex. Also, a husband can now claim maintenance from his wife, if he is unable, by his own means or labour, to support himself.

VI THE DIVORCE LAW OF THE STATE OF NEW YORK

1. *Grounds*

Until the passage of chapter 254 of the laws of 1966, the State of New York, permitted a dissolution of marriage only on the ground of adultery. The major provisions of the Act of 1966, will become operative on September 1st, 1967. The grounds for the dissolution of marriage in the state of New York will be (i) cruel and inhuman treatment so as to endanger the physical or mental wellbeing of the plaintiff and to render cohabitation unsafe or improper; (ii) abandonment for two years or more; (iii) confinement in prison for three or more consecutive years; (iv) adultery, which is defined as:

"the commission of an act of sexual or deviate sexual intercourse, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant."

(v) that husband and wife have lived apart pursuant to a decree of judicial separation for a period of two years after the granting of such decree; (vi) that husband and wife have lived separate and apart pursuant to a written separation